

In speaking of the practice in reference to supplemental bills, (not supplemental bills in the nature of bills of review after decree,) when the same become necessary in the progress of the cause, Judge Story says, "a supplemental bill (strictly so called) is proper, whenever the imperfection in the original bill arises from the omission of some material fact which existed before the filing of the bill, but the time has passed at which it can be introduced into the bill by an amendment," and that "this may arise, either from the importance of the fact not being understood in the preceding stages of the cause, and, therefore, not being put in issue, or from the fact itself not having come to the knowledge of the party until after the bill was filed." *Story's Eq. Pl., sec. 333.*

But he is here speaking of supplemental bills *prior to the decree*, and these, he says, may be used for the purpose of bringing before the court facts, which, though existing prior to the filing of the bill, were not known to the party until too late to introduce them by way of amendment, or if they were so known, their importance was not understood until the time of amendment had gone by. In this case, however, the application is for leave to file a supplemental bill in the nature of a bill of review, and in such a case, I do not any where find it said, that a party will be permitted to do so when newly discovered evidence was known to him in time to be used when the decree passed, or might have been known by the use of reasonable diligence, because its importance was not understood until after the decree had passed. The bill in this case was dismissed upon the ground that the case made by it did not give the court jurisdiction to grant relief, the legal remedy not having been shown to be exhausted or never to have existed. And the exceptions filed by the defendant to the averments of the bill distinctly brought to the notice of the complainants, that their rights to the aid of the court would be resisted upon this very ground. They were not, therefore, taken by surprise, and I cannot bring myself to think, that under the circumstances stated in their petition, they are entitled to review the former decree of the court.